



US Army Corps
of Engineers
St Paul District

Public Notice

ISSUED: August 08, 2003

EXPIRES: September 12, 2003

SECTION: 404-Clean Water Act

REFER TO: GP/LOP-2003-MN-MMW

MODIFIED PROPOSAL

REVISION & REPLACEMENT OF REGIONAL PERMIT GP/LOP-98-MN BY ISSUANCE OF GP/LOP-2003-MN AND GENERAL PERMIT GP-02-MN

1. PURPOSE OF THIS PUBLIC NOTICE.

This notice invites public comment on the St. Paul District's modified and second proposal to revise and replace GP/LOP-98-MN by issuing a revised GP/LOP (GP/LOP-2003-MN). GP/LOPs are a combination of regional general permit (GP) and letter of permission (LOP) permit procedures. GP/LOP-98-MN replaced the Corps of Engineers' Section 404 nationwide permits (NWP) in Minnesota, except on Indian Reservations, and has been in effect since January 31, 2000. It is still in effect and would be replaced and superseded by this proposal.

2. BACKGROUND.

The initial issuance of GP/LOP-98-MN (the GP/LOP) included provisions for periodic review. On September 27, 2001, the District issued a public notice that initiated a review and also proposed to modify the GP/LOP. At the request of the Minnesota Board of Water and Soil Resources (BWSR), the modifications included a new programmatic general permit (GP-02-MN) to reduce regulatory duplication between state and Federal regulatory programs and recognize revised state regulations. GP-02 would replace part of the GP/LOP and would be similar to GP-01-MN, a programmatic general permit first issued in 1985 that is based on the regulatory program of the Minnesota Department of Natural Resources (MDNR). GP-02 is based on the state regulatory program under the Minnesota Wetland Conservation Act (WCA).

Finalizing this current proposal was delayed by the U.S. Supreme Court "SWANCC" decision that affected Corps jurisdiction, the need to develop special permit conditions to protect a recently-listed Federal endangered species in Minnesota (the Topeka Shiner) and by the potential of the state budget situation to affect implementing the proposed GP-02. On June 3, 2003, BWSR responded to the District

that it could commit to the implementation of GP-02 as currently proposed and asked the District to work toward implementation of GP-02 at the earliest possible date.

This proposal was also modified in consideration of the recently revised Federal definition of fill material.

This action as now proposed reflects changes made in response to concerns the District received about its September 27, 2001, proposal. The GP/LOP as presently in effect is posted on the District's web site at: www.mvp.usace.army.mil/regulatory/ under "GP/LOP-98 Permits."

3. CONCERNS ABOUT THE SEPTEMBER 27, 2001, PROPOSAL.

Concerns expressed about the September 27, 2001, proposal include those summarized below, with the District's comments following:

Concern: The proposal should be further narrowed to satisfy Section 404(e) of the Clean Water Act, which limits general permits to activities having only minimal impacts.

District comment: The proposed GP-02 wetland acreage impact limit has been reduced from two acres to one acre and additional safeguards have been added as reflected in the attached GP-02 draft permit and noted below. Significantly, and unlike the Corps nationwide permits, the GP/LOP and GP-02 impact limits include all wetland impacts of a project whether or not they are subject to Corps' jurisdiction. GP-02 would be a programmatic GP based on WCA, which has authorization criteria similar to those of the Corps' 404 program. GP-02 would not cover any activity that failed to pass both LGU and BWSR technical staff reviews and then the Corps' review. All GP-02 activities that would impact more than 10,000 square feet of wetland would be posted on the District's web page for a 30-day public and interagency review, and the District would review all GP-02 activities on a case-by-case basis. The District believes that the proposed GPs would cover only activities having impacts that can be considered minor and that any differences in regulatory outcome between the proposal and use of standard individual permit procedures for the concerned activities would clearly be very minor.

Concern: Using Section 404 letters of permission (LOPs) instead of standard individual permits is of questionable legality, particularly where LOPs are issued without public notice and opportunity for public hearings and compliance with the Section 404(b)(1) guidelines.

District comment: The Section 404 LOPs have been implemented in accordance with Federal regulations [See 33 CFR 325.3(e)] and in consideration of careful coordination with state and Federal agencies and the public. Every Section 404 LOP issued by the District is documented by a project-specific environmental assessment that

includes the District's determination of the project's compliance with the Section 404(b)(1) guidelines, the need for compensatory mitigation and whether or not the project is contrary to the public interest. The LOPs include posting a public project notification on the District Internet web page for a 30-day public review for projects having wetland impacts that exceed 10,000 square feet. This review provides the greatest opportunity to date for public review and comment and for the public to request a public hearing concerning such permit projects.

Concern: New NWP restrictions concerning notification, compliance certification, floodplains, impaired waters and special waters limitations and mitigation should be added to the GP/LOP.

District comment: The present proposal requires applicants to submit an application to the Corps and receive written authorization from the Corps for all GP-02 and GP/LOP projects except those covered by the limited non-reporting GP. This significantly exceeds the notification requirements of the NWPs. The GP/LOP requires permittees to submit a compliance certification for all LOP authorizations. The District does not believe such certification is necessary for the non-reporting GP activities, or for the GP-02 authorizations that will be monitored by the state and the Corps. Issues concerning floodplains, state-listed impaired/special waters and compensatory mitigation are specially noted and considered in LOP decisions under the GP/LOP and would be treated similarly under GP-02. GP-02 would only authorize activities that are regulated and approved under WCA, which contains provisions for state special waters. Under GP-02 the Corps would, on a case-by-case basis, determine project compliance with the Section 404(b)(1) guidelines. The Corps would retain oversight and discretionary authority to disqualify any project from GP-02 based on non-compliance with the guidelines or on any factor of the public interest.

Concern: District data for the year ending September 2001 shows that only about half of the wetland impacted by the 619 GP actions under the GP/LOP actions is mitigated, resulting in a net wetland loss of about 15 acres in Minnesota.

District comment: The District notes that the average impact of the 619 GP projects was 0.024 acre or 1,045 square feet. District data for all Minnesota GP/LOP actions for the year ending April 1, 2002, shows a net wetland gain of about 35 acres. The District will continue to monitor this situation. The District continues to believe that the GP/LOP is environmentally and administratively preferable to use of the Section 404 nationwide permits in Minnesota.

Concern: District GP/LOP data show that with few exceptions, road authorities are credited with exactly the same amount of mitigation acres as impacted acres, which suggests a by rote approach to mitigation.

District comment: Road authorities typically propose mitigation to satisfy WCA requirements. In the Corps' experience the mitigation proposed for WCA is generally adequate to satisfy Federal requirements. The proposed mitigation acreage is often the same as the impacted acreage to satisfy a 1:1 replacement requirement. However, in some cases where proposed mitigation exceeded a 1:1 ratio, Corps' staff entered only 1:1 into the database to comply with guidance to record only the minimum compensatory mitigation that is required to satisfy the Federal Section 404 program. The St. Paul District is working on improved procedures, and also is working with the Minnesota Interagency Wetlands Group to develop an interagency database that will more accurately reflect the actual wetland gain/loss in Minnesota. In addition, the current proposal has been modified to reflect an increased general District mitigation requirement of 1.5:1 (acres mitigated:acres impacted).

Concern: LOP A and LOP B in the GP/LOP should be cut back to a 0.5-acre wetland impact limit. These LOPs limit interagency and public review of high impact activities, even in outstanding resource value waters. Section 404 requires the issuance of individual permits, subject to public notice and comment and the 404(b)(1) guidelines. Unspecified activities impacting more than 10,000 square feet are not eligible for general permits, and therefore require public notice and comment and compliance with the 404(b)(1) guidelines.

District comment: The proposed LOP A has been modified. Most notably, a new LOP A requirement has been added so that any project that would impact more than 10,000 square feet of wetland would be posted on the District web page for a 30-day public and interagency review. This change would enhance, rather than limit, the public and agency review opportunity. LOP A would cover bank protection and utility line projects that exceed the length or quantity limits of the non-reporting GP, permanent discharges for wetland/stream enhancement activities that fail to qualify for the non-reporting GP because they are proposed by a private party, and temporary construction/access and toxic waste management activities. All LOP B reviews for projects that impact more than 10,000 square feet of wetland would also require a 30-day public and interagency review. All posted LOP reviews include an opportunity to request a public hearing. It should be noted that LOPs are a form of Corps' individual permit and that all LOP authorizations are subject to project-specific Section 404(b)(1) compliance and public interest determinations and appropriate compensatory mitigation requirements. The LOPs are not limited by statute or regulation to activities having only minor impacts. The District believes that posting 30-day notices on the Internet for all GP/LOP projects that exceed 10,000 square feet of water/wetland impact significantly increases the opportunity for public and interagency review, comment and scrutiny on an unprecedented number of Section 404 projects.

Concern: The LOP D wetland impact limit is too large should be lowered to one acre.

District comment: LOP D is and would remain limited to work for maintaining or upgrading existing public roads in existing transportation corridors. The proposed impact limit remains at five acres because the District continues to believe this limit is appropriate for such projects, especially considering that the limit includes wetlands that are not regulated under Section 404. In the District's experience, the typical public road maintenance or upgrade project has evolved over recent years so that it is carefully designed from the start to satisfy WCA and Section 404 requirements, including state-mandated compensatory mitigation requirements that generally satisfy Federal requirements. Road authorities are generally careful to do this to avoid permitting delays that can jeopardize project funding. The District continues to believe that it is unnecessary and a questionable use of resources to subject such public projects for upgrading or maintaining existing roads to the most intensive and time-consuming Federal permit review procedures. The District doubts that doing so would produce substantially different regulatory results or increase environmental protection. As noted above, the District's LOP reviews include a 30-day public/interagency comment and review period with opportunity for public hearing, a project-specific environmental assessment and a 404(b)(1) compliance and a public interest review determination. The District believes that LOP D procedures are fully adequate to detect any public road maintenance or upgrade projects that do not satisfy Federal Section 404 requirements and subject those projects to appropriate modifications or standard individual permit evaluation procedures.

Concerns: The GP-02 impact limit of two acres is too high and should be one-half acre. GP-02 would rely on WCA decisions made by some local government units (LGUs) that lack qualified personnel. GP-02 should be limited to WCA authorizations that are based on WCA Technical Panel Evaluations (TEPs). GP-02 should require project proponents to submit a compliance certification to the Corps. GP-02 should not cover activities that would adversely affect Federally listed threatened or endangered species or their critical habitat. The Corps should not send a GP-02 confirmation letter to applicants until the Corps' review is complete. The Corps must retain active oversight of projects affecting 10,000 square feet or less. GP-02 should require full sequential mitigation. Initially, GP-02 should be issued for a two-year trial period and its performance should be periodically evaluated by the Corps and other agencies.

District comment: In response to these comments and concerns, many of which were received from more than one source, the District has substantially modified the GP-02 proposal. The impact limit has been cut in half to one acre. GP-02 would now be limited to projects

where the WCA permit action is consistent with the recommendations of a TEP review that included a BWSR representative, or where the LGUs' permit action is reviewed and certified as consistent with all provisions of WCA by a BWSR technical representative. GP-02 and the GP/LOP are conditioned to protect Federally-listed threatened or endangered species and their critical habitat. GP-02 would only cover projects that are regulated and approved under WCA and would exclude projects regulated under local WCA plans that the District has not approved as consistent with the Corps Section 404 program. GP-02 would not cover projects that are completely exempt from WCA regulation regardless of size. All GP-02 projects would receive a case-by-case review by the Corps. GP-02 would be subject to periodic review. With the exception of requiring a compliance certification as discussed in an above comment, the District believes that the attached, modified GP-02 proposal effectively addresses all of the concerns.

4. OTHER REVISIONS OF GP/LOP-98-MN.

New proposal concerning Public/Interagency monitoring: The District proposes to post a monthly list of all GP/LOP-2003-MN and GP-02-MN permit actions on its Internet web page for public and interagency review. This list would show each permit action taken during the month, including the Corps' file number, project location by county, acres of project impact and acres of compensatory mitigation required. Additional information about any permit action could be obtained by contacting the District.

Some GP/LOP sections have been reorganized to improve clarity. The GP/LOP would no longer involve any 15-day public and interagency review and comment periods; all review and comment periods would be 30 days. All LOP projects that would impact more than 10,000 square feet of water/wetland would be posted on the District's web page for a 30-day review. Wetland/riparian restoration projects involving permanent discharges into wetlands by private parties would be eligible for LOP A, while such projects done by a state or Federal agency would be eligible for the non-reporting GP. A provision has been added so that private pond projects up to an acre in size that involve no permanent disposal of material in wetlands would be covered by the non-reporting GP except in certain wetland types. This provision would cover any temporary mats or workpads that require Section 404 authorization.

The "special waters" category of the proposed GP/LOP has been eliminated because the District believes it is of little value and eliminating it would significantly streamline and simplify the GP/LOP and reduce state and Federal regulatory duplication. The District believes that the MDNR and WCA regulatory programs provide adequate protection for these waters. Projects in the special waters are regulated by the MDNR and are generally eligible for authorization under a Corps' programmatic GP that is based on MDNR's authority (GP-01-MN). These projects are not covered under GP-02 or the GP/LOP.

WCA-regulated projects in wetlands adjacent to the special waters would be eligible for the GP/LOP or GP-02. WCA provides special consideration for the state's trout waters, outstanding resource value waters and certain other waters. For WCA-regulated projects in shoreland wetlands the TEP must include a MDNR technical professional. GP-02 would be limited to WCA actions that are in accordance with a TEP recommendation or that are reviewed and certified by a BWSR technical professional. Further, the Corps would maintain case-by-case review and oversight of all GP-02 actions on these waters.

In coordination with the U.S. Fish and Wildlife service, substantial special conditions have been added to the proposed GP/LOP and GP-02 to protect the Topeka Shiner, a recently listed Federally-endangered minnow found in five southwest Minnesota counties.

5. DETERMINATION OF WETLAND IMPACTS.

A significant feature of the GP/LOP and GP-02 is that all wetland impacts (filling, draining, excavating and inundating) would be included in determining the total wetland impacts of a single and complete project, whether or not the impacts occur in wetlands that are subject to the Corps' Section 404 jurisdiction. Projects that exceed the limits would not be eligible for authorization under the GP/LOP or GP-02.

6. REPLIES/COMMENTS.

The revised, proposed GP/LOP and GP-02 permits are posted for access by the public on the District's web page, under the section on PERMIT INFORMATION, at: <http://www.mvp.usace.army.mil/regulatory/>. A paper copy may be obtained at the District Office at the address below, or a copy may be obtained through the mail by contacting the District Regulatory Branch at (651) 290-5375.

Interested parties are invited to submit to this office written comments, facts, arguments, suggestions or objections on or before the expiration date of this public notice. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served. Replies may be addressed to: District Engineer, St. Paul District, Corps of Engineers, 190 Fifth Street East, St. Paul, MN 55101-1638, ATTN: CO-R-MMW. Questions may be directed to Mr. Michael Weburg at the above address, or telephone (651) 290-5367.

After consideration of comments received, the District may conduct further coordination or proceed to take action on the proposal to revise the GP/LOP and issue GP-02-MN, as appropriate. District actions will be announced in a future public notice.

7. STATE WATER QUALITY CERTIFICATION.

GP-02 cannot be issued without state certification or waiver under Section 401 of the Clean Water Act. The Section 401 certifying agency for Minnesota is the Minnesota Pollution Control Agency (MPCA). This public notice is intended by the St. Paul District to serve as its application to the MPCA for Section 401 certification of GP-02-MN and the proposed modification of GP/LOP-98-MN. In accordance with Corps' regulations at 33 CFR 325.2b.1.ii., waiver of this certification will be deemed to occur if the certifying agency fails or refuses to act on this request for certification within sixty days after the issuance date of this public notice. Comments concerning state Section 401 certification may be sent during this public notice comment period to: Minnesota Pollution Control Agency, Metro District, Attention 401 Certification, 520 Lafayette Road, St. Paul, MN, 55155-4194.

8. FEDERALLY-LISTED THREATENED OR ENDANGERED WILDLIFE OR PLANTS.

This proposal is being coordinated with the U.S. Fish and Wildlife Service (FWS). Any comments it may have concerning Federally-listed threatened or endangered wildlife or plants or their critical habitat will be considered in our final assessment of the proposal.

9. HISTORICAL/ARCHAEOLOGICAL.

This public notice is being sent to the National Park Service, Tribal Governments, the State Archaeologist, and the State Historic Preservation Officer to determine if there are known cultural resources which may be affected by the proposal. Unknown archaeological, scientific, or historical data could be lost or destroyed by work authorized by Section 404 GPs or LOPs.

10. REGULATORY AUTHORITY.

This proposal will be reviewed according to the provisions of Section 404 of the Clean Water Act. Our public interest review will include consideration of the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

11. PUBLIC INTEREST REVIEW.

The decision on the proposed actions will be based on an evaluation of the probable impact, including cumulative impacts, of the proposal on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue must be balanced against reasonably foreseeable detriments. All relevant factors will be considered, including economics and the environment and, in general, the needs and welfare of the people. Pertinent documents will be available for review in the St. Paul District Office. The Corps is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes and other interested parties in order to consider and evaluate the impacts of this proposal. Comments received will be considered to determine whether to issue, modify, condition, or abandon this proposal.

Comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and public interest factors listed above. Comments may be used in the preparation of environmental documents pursuant to the National Environmental Policy Act. Comments are also used to determine the overall public interest of the proposed action.

A handwritten signature in black ink, appearing to read 'Robert L. Ball', written over a horizontal line.

Robert L. Ball
Colonel, Corps of Engineers
District Engineer

(DRAFT) GP/LOP-2003-MN - Section 404 Activities in Minnesota - SUMMARY (DRAFT) 11 Jun 03

SOME EXCLUDED ACTIVITIES	<ul style="list-style-type: none"> GP/LOP-98-MN cannot be used to authorize any discharge of dredged/fill material into calcareous fens and wetlands within 300 feet of calcareous fens, or any activity that is part of a project that would divert more than 10,000 gallons of surface or ground water per day in or out of the Great Lakes Basin. GP/LOP-2003-MN AND GP-02-MN DO NOT COVER ANY ACTIVITY IN THE TOPEKA SHINER AREA (see below) that fails to meet any TOPEKA SHINER condition specified in the GP/LOP-2003 OR GP-02-MN permits, unless the Corps in consultation with the FWS removes this restriction on a case-by-case basis.
GP (Non-reporting)	<p>Covers discharges of dredged/fill material for maintenance of existing structures or fills (1/3-acre impact limit), bank protection, discharges of bedding and backfill for utility line installations that cross up to 500 feet of wetland, 404 activities for USCG-approved bridges, return water, oil/hazardous substance spill cleanup, small structural discharges, completed enforcement actions, certain wetland/stream restoration/creation activities by or funded by government agencies and some small private pond projects, moist soil management by Federal/state agencies and minor discharge activities that directly and indirectly impact less than 400 square feet of water/wetland area (see * below) that meet all permit conditions (refer to detailed permit descriptions and conditions).</p> <p>The non-reporting GP does not cover any activity in Federal Wild and Scenic Rivers. Such activities must all be reported and may be eligible for an LOP, below.</p> <p>No pre-project application or notification to COE is required if all conditions contained in the permit are met.</p>
LOP A	<p>Covers bank protection activities in excess of one cubic yard per running foot and up to 1000 feet long, wetland/stream restoration activities by private parties on private land, discharges of bedding/backfill for utility line projects that are more than 500 feet long in water/wetland areas or that involve landclearing more than 10,000 square feet of forested wetland, temporary construction/access/dewatering activities and toxic waste management activities. Refer to the detailed permit descriptions and conditions for all activities (refer to detailed permit descriptions and conditions).</p> <ul style="list-style-type: none"> Application to COE and written, project-specific LOP authorization from COE required. COE conducts 30-day public/interagency review via Internet (project notification is posted on District web page) if impacts exceed 10,000 sq. ft. of water/wetland area.
GP-02-MN	<p>Covers activities that are regulated and approved pursuant to the Minnesota Wetland Conservation Act (WCA) that impact not more than one acre of wetland/water area, where the WCA replacement plan for the project is EITHER in full accordance with a WCA TEP recommendation where the TEP included a BWSR representative, OR is reviewed and certified by professional technical staff of the Minnesota Board of Water and Soil Resources as being fully consistent with the MWCA. This GP does not cover any activity regulated under a local WCA plan that has not been determined by COE to be at least as environmentally protective as the Corps' Section 404 regulatory program. Refer to detailed GP-02 permit descriptions and conditions.</p> <ul style="list-style-type: none"> Application to COE and WCA/LGU required. Written, project-specific COE authorization is required. COE conducts 30-day public/interagency review via Internet (project notification is posted on District web page) if impacts exceed 10,000 sq. ft. of water/wetland area.
LOP B	<p>Covers discharges of dredged or fill material that are not eligible for GP-02 that impact not more than 2.0 (two) acres of wetland/water area.</p> <ul style="list-style-type: none"> Application to COE and written authorization from COE required. COE conducts a 30-day public/interagency review (via Internet) if total project impact exceeds 10,000 sq. ft. of water/wetland area. Appropriate compensatory mitigation required if mitigation threshold exceeded (see **below).
LOP D	<p>Covers public road projects to improve/upgrade EXISTING roads (5-acre total project water/wetland impact limit).</p> <ul style="list-style-type: none"> Application to COE required. Written authorization from COE required. 30-day public/interagency review if impacts exceed 10,000 sq. ft. of water/wetland area. Appropriate compensatory mitigation required if mitigation threshold exceeded (see ** below).
*Water/wetland area.	The water/wetland impact limits of GP/LOP-98-MN include ALL impacts in water or wetland areas, whether or not those areas are subject to the Corps' jurisdiction under Section 404 of the Clean Water Act.
**Mitigation thresholds	**Thresholds for compensatory mitigation requirement are based on MWCA de minimis thresholds, generally 400 sq. ft. in shoreland area, 2,000 sq. ft. in less than 50% county, 5,000 sq. ft. in 50-80% county, 10,000 sq. ft. in 80%+ county. If the threshold is exceeded, compensatory mitigation is required for ALL wetland impacts.
TOPEKA SHINER AREA	The TOPEKA SHINER AREA: streams, side channels, cut-off channels, oxbows and wetlands that are part of or at least periodically connected to streams in Minnesota's Big Sioux and Rock River Watersheds in Murray, Nobles, Rock, Pipestone and Lincoln County. A map of the TOPEKA SHINER AREA may be found on the Internet via http://www.mvdp.usace.army.mil/regulatory .
NOTE	A monthly list of all GP/LOP-2003 and GP-02 actions will be posted on the District's Internet web site. This will show the Corps file number, type of permit action, and project wetland impact acreage and mitigation acreage grouped by county. This list will be available through http://www.mvdp.usace.army.mil/regulatory .

DEPARTMENT OF THE ARMY PERMIT

Permittee: The General Public in Minnesota

Permit No. GP/LOP-2003-MN **DRAFT** - Jun 11, 2003

Issuing Office: St. Paul District U.S. Army Corps of Engineers

Issuance Date: **DRAFT**

Expiration Date: **December 31, 2008**

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

REPLACEMENT OF PREVIOUS GP/LOP-98-MN:

Upon issuance, this permit replaces GP/LOP-98-MN that was issued on January 31, 2000.

SECTION 404 LETTER OF PERMISSION PROCEDURES:

Effective upon the issuance date above, the general public in the State of Minnesota may request Section 404 authorization from the St. Paul District under the Section 404 Letter of Permission (LOP) procedures specified in the LOP Section of this permit.

GENERAL PERMIT AUTHORIZATION: In addition, the general public in Minnesota is hereby authorized to perform certain work that is in accordance with all terms and conditions of the general permit (GP) as specified below, without notifying or receiving confirmation from the Corps of Engineers.

IMPORTANT: All GP and LOP authorizations under GP/LOP-2003-MN are subject to the provisions and conditions specified below. In addition, some authorizations may be subject to project-specific special conditions that, if any, will be identified in the St. Paul District's authorization for the project. Refer to the information below for a description of GP and LOP procedures, eligible activities, conditions, exclusions and application instructions.

PROJECT DESCRIPTION AND LOCATION: GP/LOP-2003-MN applies to certain discharges of dredged and/or fill material into waters of the United States at various locations and as described herein, in Minnesota except within the exterior boundaries of Indian Reservations.

DETERMINATION OF WETLAND IMPACTS FOR PURPOSES OF GP/LOP-2003-MN.

All wetland impacts (filling, draining, excavating or inundating) are included in determining a project's total wetland impact, whether or not the activity that would cause the impact or the wetland area that would be impacted is subject to the Corps' Section 404 jurisdiction. However, projects that involve NO discharges that are subject to the Corps' Section 404 jurisdiction do not require a Section 404 permit.

SPECIAL CONDITION TO PROTECT A FEDERALLY ENDANGERED FISH IN SOUTHWEST MINNESOTA: Persons proposing work in streams or adjacent or connected wetland or water areas in **THE BIG SIOUX OR ROCK RIVER WATERSHEDS IN LINCOLN, PIPESTONE, MURRAY, ROCK AND NOBLES COUNTIES** must note and comply with all provisions of special condition 29 of this permit that is intended to protect a Federally endangered fish, the Topeka Shiner (*Notropis topeka*). This condition applies to all regulated activities that are conducted in streams or in side channels, cut-off channels, oxbows, and wetlands that are at least periodically connected to streams in Minnesota's Big Sioux and Rock River Watersheds. On a case-by-case basis the Corps and/or U.S. Fish and Wildlife Service (USFWS) may determine that provisions of this condition do not apply to certain areas within these watersheds where Topeka shiners may not occur; however, the Topeka Shiner occurs throughout most of these two watersheds. Therefore, persons proposing work in water or wetland areas in these watersheds should contact the Corps' Regulatory Project Manager for the project area to determine if this condition applies to their project. Corps' contact information is available by calling the St. Paul District Regulatory Branch at 651 290-5375 or may be obtained via the Internet at <http://www.mvp.usace.army.mil/regulatory>. This condition applies to all parts of GP/LOP-2003, including the non-reporting GP.

GP/LOP-2003-MN TERMS AND PROCEDURES

As a general rule, all discharges of fill or dredged material into waters of the U.S., which include wetlands, require a Section 404 permit from the Corps of Engineers. Persons proposing such work should especially note that, in ALL cases including the non-reporting general permits, GP/LOP-2003-MN requires that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practical. Discharges into certain waters defined below are not eligible for authorization under GP/LOP-2003-MN.

Project proponents should carefully read all of the GP and LOP sections below, with special attention to the GP/LOP-2003-MN OTHER PROVISIONS and GP/LOP-2003-MN STANDARD

CONDITIONS sections of this permit. These provisions and conditions apply to all GP/LOP-2003-MN authorizations, including the non-reporting GPs. The St. Paul District WWW site: <http://www.mvp.usace.army.mil> will contain helpful information for applicants in the "Regulatory" section.

GENERAL PERMIT (NON-REPORTING GP)

This section describes the Section 404 general permit authorization implemented by the St. Paul District as part of GP/LOP-2003-MN.

1. ACTIVITIES EXCLUDED FROM THE NON-REPORTING GP:

The non-reporting GP authorization is

not valid for any activity that:

1. would permanently alter over 500 linear feet of a natural watercourse by channelization or diversion; or
2. would include the discharge of demolition material (as defined by Minn. R. 7035.0300, Subp. 30), or contaminated or polluted sediments into water or wetland areas, unless specifically authorized by the Minnesota Pollution Control Agency; or
3. is in a calcareous fen, or in wetlands adjacent to and within 300 feet of, a calcareous fen designated by the state; or
4. is in a Federally-designated Wild and Scenic River, or

5. is part of a project that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.

2. HOW TO RECEIVE A NON-REPORTING GP AUTHORIZATION UNDER GP/LOP-2003-MN:

An activity authorized by this GP may commence when project proponents have carefully confirmed that the activity will be conducted in compliance with all of the terms and conditions of GP/LOP-2003-MN. No application to the Corps is required; however, if requested, the Corps will confirm whether or not proposed work is authorized by the non-reporting GP. Persons proposing to do work should note that conditions of the GP require that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practical. Activities that would adversely affect Federal endangered plant or animal species or certain cultural/archaeological resources are not authorized by the non-reporting GP. Information about Federal Endangered species may be obtained by contacting the U. S. Fish and Wildlife Service at (612) 725-3548. The District's WWW site (www.mvp.usace.army.mil) will also contain a link to the U.S. Fish and Wildlife Service. Information concerning cultural resources may be obtained by contacting the State Historic Preservation Office at (651) 296-5462. Project proponents are encouraged to contact these agencies early in project planning because doing so can help avoid violations of Federal law and potentially lengthy permitting delays. Persons performing work should be aware that Federal or state regulations concerning endangered species and cultural resources may apply to their projects whether or not the work requires a Corps permit.

3. ACTIVITIES AUTHORIZED BY THE NON-REPORTING GP:

A. Maintenance activities. Discharges of dredged or fill material for the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill that affect

not more than 1/3 acre of wetland/water in addition to the area that has already disturbed by the structure or fill to be maintained. Minor deviations, up to the 1/3 acre limit, are allowed where necessary to conform with modern construction practices, materials, construction codes, or safety standards. Discharges to repair or replace structures destroyed by storms, floods, fire or other discrete events are included, provided they are commenced or under contract to commence within two years of the date that the damage occurred

B. Bank Stabilization. Discharges of dredged or fill material for bank stabilization activities provided that no material is placed in wetlands and the bank stabilization activity is less than 500 feet in length and will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark.

C. Utility Line Discharges. Discharges of dredged or fill material associated with excavation, backfilling or bedding for electric, natural gas, fiber-optic, water and stormwater and sanitary sewer utility lines, including associated outfall and intake structures, provided that there is no change in preconstruction contours, no landclearing in more than 10,000 square feet of forested wetland, and the portion of the utility line that is in waters of the U.S. is not more than 500 feet long. The utility line project may not cause any wetland drainage. (Utility lines that carry other substances or that do not meet all of these conditions may be eligible for authorization under LOP procedures below).

D. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeway and approach fills are not included.

E. Return Water From Upland Contained-Disposal Areas. Return water from an upland contained dredged material disposal area where the discharge has been approved by the Minnesota Pollution Control Agency.

F. Oil/Hazardous spills. Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan.

G. Structural Discharges. Discharges of material such as concrete, sand, rock, etc. into tightly sealed forms or cells where the material will be used as a structural member such as a utility pole, bridge support, ramp surface, or retaining wall. This activity does not include building foundations or other structures such as pilings intended for use as building supports, or any structure that would occupy more than 1,000 square feet of wetland area.

H. Completed Enforcement Actions. Discharges of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with the terms of a final written Corps non-judicial settlement agreement resolving a Section 404 violation or the terms of an EPA 309(a) order or consent decree or a judicial decree resolving a violation of Section 404 of the CWA, and that require Section 404 authorization from the Corps of Engineers. This GP covers only those discharges not authorized under EPA's statutory authority under Section 309(a) of the Clean Water Act.

I. Stream and Wetland Restoration Activities. Activities in waters of the United States associated with the restoration and enhancement of former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, and the restoration and enhancement of non-Section 10 streams and open water areas; (i) on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration or creation

agreement between the landowner and the U.S. Fish and Wildlife Service or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or (ii) on any Federal land; or (iii) on reclaimed surface coal mined lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining or the applicable State agency. (The future reversion discussed below does not apply to streams or wetlands created, restored or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank.); or (iv) by or funded by a state agency on any public or private land. Such activities include, but are not limited to, the removal of accumulated sediments, the installation, removal and maintenance of small water control structures, dikes and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation; mechanized land-clearing to remove undesirable vegetation; and other related activities. This GP cannot be used to authorize activities for the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This GP cannot be used to channelize a stream and does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this GP may be used to relocate aquatic habitat types on the project site, provided there are net gains in aquatic resource functions and values. For example, this GP may authorize the creation of an open water impoundment

in an emergent wetland, provided the emergent wetland is replaced by creating that wetland type in the adjacent uplands. Reversion: For enhancement, restoration and creation projects conducted under paragraphs (ii) and (iv), this GP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit at that time would be required for any reversion. For restoration, enhancement and creation projects conducted under paragraphs (i) and (iii), this LOP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this LOP expires. The five-year reversion limit does not apply to agreements without time limits reached under paragraph (i). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate State agency executing the agreement or permit. Prior to any reversion activity the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. Because projects that would be authorized by this permit are designed to enhance the aquatic environment, mitigation will not be required for the work. This GP includes TEMPORARY discharges for construction of wildlife ponds by private landowners on their property for ponds not more than an acre in size and not deeper than six feet provided that side slopes are no steeper than 8H:1V, the pond is not within 300 feet of any state-designated trout stream or in a calcareous fen or forested wetland, and no excavated material is permanently disposed of in wetland. See LOP A below concerning

other private pond projects on private land.

J. Moist soil management for wildlife. Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on Federally/tribal-owned or managed and state-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: the repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or disking to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This GP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This GP does not authorize converting wetlands to uplands, impoundments or other open water bodies.

K. Minor discharges (that impact 400 square feet or less of wetland/water area) for other purposes. Discharges of dredged/fill material, for a single and complete project, that would result in filling, draining, or inundating not more than 400 square feet of wetland/water area. This authorization may NOT be used more than once by the permittee or property owner so as to impact more than 400 square feet of the same wetland basin or waterbody.

LETTER-OF-PERMISSION (LOP) SECTION

This section describes the Section 404 Letter of Permission authorization procedures of GP/LOP-2003-MN.

1. EXCLUSIONS FROM LOP AUTHORIZATIONS:

The following activities are not authorized under LOP provisions of GP/LOP-2003-MN and will require evaluation under standard individual permit procedures.

A. Any discharge of dredged and/or fill material into a calcareous fen, or into wetlands adjacent to and within 300 feet of a calcareous fen, as officially designated by the state. However, discharges for containment and cleanup of hazardous or toxic spills in these areas are eligible for LOP A below.

B. Any discharge that is part of a project that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.

2. HOW TO APPLY FOR A LOP AUTHORIZATION UNDER GP/LOP-2003-MN:

An application to the Corps is required for all LOPs. Projects are not authorized until the applicant receives a written letter of permission specifically for the project from the Corps. Applicants are encouraged to use the Federal-State application forms package that is available from local or state MDNR, BWSR or Corps offices, or may use the Federal permit application form available at Corps offices. For some projects, as noted below, the Corps will conduct interagency/public coordination to receive comments and information about the proposed project. All authorized work must be conducted in compliance with all of the terms and conditions of GP/LOP-2003-MN.

Applicants are encouraged to help speed the Corps evaluation and increase the chance of receiving a favorable interagency review and authorization by including information with their application that clearly shows that the proposed work is the least environmentally damaging way that is practical to accomplish the purpose of the project. The Corps must generally deny any permit request unless the applicant demonstrates, and the Corps evaluation confirms, that the work proposed is the

least environmentally damaging way that is practical to accomplish the project purpose and that impacts to wetland/water areas cannot reasonably be avoided or further minimized. The Corps must also deny authorization for any regulated activity that the Corps determines is contrary to the public interest.

LOPs may require a **wetland delineation** done in accordance with the 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL before the application will be considered complete. The applicant may ask the Corps to prepare the delineation; however, applicants are encouraged to obtain the services of professional consultants to avoid delays.

Applicants for LOPs should also note **compensatory mitigation requirements** and if required, include detailed information about how they propose to provide compensatory mitigation to offset the adverse wetland impacts of the project. For some projects a monetary contribution to in-lieu fee mitigation or use of a mitigation bank may satisfy the compensatory mitigation requirement. Compensatory mitigation that is proposed to satisfy state or local requirements may, but will not necessarily, also satisfy the Federal requirement.

Applicants are encouraged to obtain the services of professional consultants in planning projects and preparing applications, wetland delineations and compensatory mitigation plans. Applicants are advised that activities that adversely affect Federal Endangered plant or animal species or important cultural resources are not authorized under GP/LOP-2003-MN. Information about Federal Endangered species may be obtained by contacting the U. S. Fish and Wildlife Service at (612) 725-3548. Information on cultural resources may be obtained by contacting the State Historic Preservation Office at (651) 296-5462. Applicants should contact these agencies early in the planning process because doing so can help avoid later and

potentially lengthy delays in completing the Corps permit evaluation procedures.

REPORTING REQUIREMENT: All permittees that receive a LOP must send a COMPLIANCE CERTIFICATION to the District after the work is done, as specified at paragraph 1. of the GP/LOP-2003-MN STANDARD CONDITIONS ATTACHMENT.

3. ACTIVITIES ELIGIBLE FOR LOP AUTHORIZATION:

A. LOP A – may cover discharges for bank protection and utility line projects as described in the GP Section but that exceed the non-reporting GP criteria, or that fail to meet the channelization, diversion, or demolition/contaminated fill criteria of the GP (except that activities in calcareous fens require evaluation under individual permit procedures). LOP A may also cover discharges for the following specific activities:

1. **Temporary construction, access and dewatering.** Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard, or for other construction activities not subject to the Corps or U.S. Coast Guard regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use. Structures left in place after cofferdams are removed require a

Section 10 permit if located in navigable waters of the U.S.

2. Cleanup of hazardous and toxic waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this LOP. This LOP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities undertaken entirely on a CERCLA site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

3. Stream and Wetland Restoration
Activities as defined under the non-reporting GP above, when done on private land by a private party. This LOP covers temporary discharges for private pond projects on private land that impact less than two acres of wetland and that are not eligible for the non-reporting GP.

EVALUATION PROCEDURES - LOP A.

The District will review each application for compliance with all LOP conditions. The District will conduct a public/interagency Internet-based review with a 30-day comment period for projects that have total wetland/water area impacts that exceed 10,000 square feet. The District will conduct a public hearing if one is warranted and complete a 404(b)(1) analysis and environmental assessment. The District will require appropriate compensatory mitigation in accordance with paragraph 2. of the GP/LOP-2003-MN OTHER INFORMATION section. The District will authorize only those projects found to be in compliance with all GP/LOP authorization criteria. Authorizations will incorporate appropriate permit special conditions as deemed necessary to ensure compliance with GP/LOP-2003-MN or to protect the aquatic environment or public interest.

Federally listed endangered species and cultural resources reviews. The Corps review will include a determination concerning compliance of the project with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. Projects found not to comply with either Act will not be authorized under the GP or any other Corps permit authorization until actions are taken so that compliance with both Acts is assured. The Corps Federal endangered species review will consist of Corps staff consulting appropriate reference materials including endangered species information published by the U.S. Fish and Wildlife Service (USFWS) in informational brochures and on Internet World Wide Web pages and any other available data, information or specific guidance provided by USFWS. Corps staff will be aware of locations where endangered species are known or likely to be present and of the types of activities that may affect those species. Corps staff will directly consult with USFWS staff concerning proposals that appear to have potential to affect listed species. The review will include Corps and/or USFWS site inspections of specific project sites, and/or formal Section 7 interagency consultation where necessary.

The Corps Federal cultural resources review will be conducted in a manner similar to the endangered species review. The National Register of Historic Places will be consulted to determine the presence or absence of known cultural resources. Corps regulatory staff will be aware of areas that have a high probability to contain important cultural resources and will consult Corps cultural resource staff concerning questionable projects. Corps regulatory or cultural resource staff will consult with the State Historic Preservation Officer on appropriate projects. Cultural resource surveys and/or formal consultation with the President's Advisory Council on Historic Preservation will be conducted where necessary.

The Corps LOP review will include identifying and considering potential project impacts on 100-year floodplains,

impaired waters listed on state EPA TMDL Program 303(d) lists and adjacent wetlands, and resources such as wild rice that have been identified as resources of special concern to Federally-recognized Indian tribes. Corps District regulatory staff will consult with Indian tribes to identify and maintain awareness of such resources of special tribal concern.

The District will issue a letter of permission authorizing those projects found to be in compliance with all terms and conditions of GP/LOP-2003-MN and the Section 404(b)(1) guidelines, provided the District determines the proposed work is not contrary to the public interest. The District will do the level of analysis required to determine whether or not the proposal meets the authorization criteria. Projects that fail to meet any LOP authorization criteria will be denied authorization.

B. LOP B – may cover activities not covered above or by GP-02-MN that impact more than 400 square feet but less than two acres of water and/or wetland. LOP B covers the discharge of dredged/fill material, for a single and complete project, that would result in filling, draining, excavating, or inundating more than 400 square feet of wetland/water area but less than two acres acre of wetland/water area.

EVALUATION PROCEDURES - LOP B.

The District will review each application for compliance with all applicable conditions. The District will conduct a public - interagency Internet-based review with a 30-day comment period for projects that have total wetland/water area impacts that exceed 10,000 square feet. The District will conduct a public hearing if one is warranted and complete a 404(b)(1) analysis and environmental assessment. The District will require appropriate compensatory mitigation in accordance with paragraph 2. of the GP/LOP-2003-MN OTHER INFORMATION section. The District will authorize only those projects found to be in compliance with all GP/LOP authorization criteria. Authorizations will incorporate appropriate permit special conditions as deemed necessary to ensure compliance

with GP/LOP-2003-MN or to protect the aquatic environment or public interest.

C. LOP C, formerly contained in GP/LOP-98-MN, has been replaced by regional general permit GP-02-MN. Refer to GP-02-MN concerning activities that are regulated and approved under the Minnesota Wetlands Conservation Act.

D. LOP D may cover discharges of dredged/fill material for the maintenance or upgrade of existing public roads within established transportation corridors that would result in filling, draining, or inundating not more than a total of 5.0 (five) acres of wetland/water area.

EVALUATION PROCEDURES - LOP D.

The District will review each application for compliance with all LOP conditions. The District will conduct a public/interagency Internet-based review with a 30-day comment period for projects that have total wetland/water area impacts that exceed 10,000 square feet. The District will conduct a public hearing if one is warranted and complete a 404(b)(1) analysis and environmental assessment. The District will require appropriate compensatory mitigation in accordance with paragraph 2. of the GP/LOP-2003-MN OTHER INFORMATION section. The District will authorize only those projects found to be in compliance with all GP/LOP authorization criteria. Authorizations will incorporate appropriate permit special conditions as deemed necessary to ensure compliance with GP/LOP-2003-MN or to protect the aquatic environment or public interest.

GP/LOP-2003-MN STANDARD CONDITIONS

All GP/LOP-2003-MN AND GP-2-MN authorizations are subject to the following standard conditions, as applicable. These conditions must be satisfied for any GP or LOP authorization, including the non-reporting GPs, to be valid:

1. Compliance Certification. (LOPs only). Under all LOP authorizations of GP/LOP-2003-MN authorizations, the

permittee must submit a compliance certification to the St. Paul District within 30 days of completion of the work. The District will include a certification form with its authorization letters. Permittees may also obtain this form by contacting the St. Paul District. This requirement does not apply to non-reporting GP authorizations under GP/LOP-2003-MN.

2. Case-by-case conditions. The activity must comply with any special conditions which may have been added by the District or by a state, tribe, or the U.S. Environmental Protection Agency in its section 401 water quality certification or consistency determination under the Coastal Zone Management Act. Such conditions will be specifically identified in any LOP issued for the project.

3. Mitigation/Sequencing. Discharges of dredged or fill material into waters of the United States **must be minimized or avoided to the maximum extent practicable.**

4. State/Tribal Water quality certification and Coastal zone management (CZM) consistency determination. Some GP/LOP-2003-MN authorizations may not be valid unless and until an individual Section 401 water quality certification or CZM consistency determination is obtained from or waived by the appropriate agency. If this condition applies, it will be so noted in the District's authorization letter for the project.

5. Suitable material. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.,) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

6. Proper maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

7. Erosion and siltation controls. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction,

and all exposed soil and other fills, as well as any work below the ordinary high water mark must be permanently stabilized at the earliest practicable date.

Work should be done in accordance with state-approved, published practices, such as defined in Minnesota Pollution Control Agency Document, **PROTECTING WATER QUALITY IN URBAN AREAS - BEST MANAGEMENT PRACTICES FOR MINNESOTA.**

8. Removal of temporary fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

9. Endangered Species.

a. No activity is authorized which is likely to adversely affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

b. Authorization of an activity under GP/LOP-2003-MN does not authorize the take of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with incidental take provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal takes of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their World Wide Web pages on the Internet.

c. If it becomes apparent that a Federally listed endangered plant or animal species

will be affected by work authorized by this permit, work must be stopped immediately and the St. Paul District of the Corps of Engineers must be contacted for further instruction.

10. Historic properties, cultural resources. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must include notification to the District in the permit application if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places.

11. Spawning areas. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

12. Obstruction of high flows. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

13. Adverse effects from impoundments. If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

14. Waterfowl breeding areas. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

15. Navigation. No activity may cause more than a minimal adverse effect on navigation.

16. Aquatic life movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water.

17. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

18. Tribal rights. No activity or its operation may impinge or abrogate reserved treaty rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

19. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

20. Water quality standards. All work or discharges to a watercourse resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable Federal, State, and local water quality and effluent standards on a continuing basis.

21. Preventive measures. Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the

construction area in a manner that would allow them to enter the watercourse as a result of spillage, natural runoff, or flooding.

22. Disposal sites. If dredged or excavated material is placed on an upland disposal sight (above the ordinary high-water mark), the site must be securely diked or contained by some other acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal sight, must be fully completed prior to the placement of any dredged material.

23. Erosion control. Upon completion or earthwork operations, all exposed slopes, fills, and disturbed areas must be given sufficient protection by appropriate means such as landscaping, or planting and maintaining vegetative cover, to prevent subsequent erosion. Cofferdams shall be constructed and maintained so as to prevent erosion into the water. If earthen material is used for cofferdam construction, sheet piling, riprap or a synthetic cover must be used to prevent dam erosion.

24. Suitable fill material. All fill (including riprap), if authorized under this permit, must consist of suitable material free from toxic pollutants in other than trace quantities. In addition, rock or fill material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened up to obtain fill material, the State Historic Preservation Officer (SHPO) must be notified prior to the use of the new site. Evidence of this consultation with the SHPO will be forwarded to the St. Paul District Office.

25. Cultural resources. If cultural, archaeological, or historical resources are unearthed during activities authorized by this permit, work must be stopped immediately and the State Historic Preservation Officer must be contacted for further instruction.

26. Water intakes/activities. An

investigation must be made to identify water intakes or other activities that may be affected by suspended solids and turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.

27. Spill contingency plan. A contingency plan must be formulated that would be effective in the event of a spill.

This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the State Duty Officer at 1-800-422-0798 and the U.S. Coast Guard at telephone number (1-800) 424-8802.

28. Other permit requirements. No Corps GP/LOP-2003-MN authorization eliminates the need for other local, state or Federal authorizations, including but not limited to National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permits from the Minnesota Pollution Control Agency.

29. The following special conditions to protect a Federally endangered fish, the Topeka Shiner (*Notropis topeka*), apply in **Minnesota's Big Sioux and Rock River Watersheds in LINCOLN, PIPESTONE, MURRAY, ROCK AND NOBLES COUNTIES.** These conditions apply to all regulated activities that are conducted in streams and in side channels, cut-off channels, oxbows, and wetlands that are at least periodically connected to streams in Minnesota's Big Sioux and Rock River Watersheds. On a case-by-case basis the Corps and/or U.S. Fish and Wildlife Service (USFWS) may determine that these conditions do not apply to certain areas within these watersheds where Topeka shiners may not occur; however, the Topeka Shiner occurs throughout most of these two watersheds. **Therefore, persons proposing work in water or wetland**

areas in these watersheds should contact the Corps' Regulatory Project Manager for the project area to determine if these conditions apply to their project. Corps' contact information is available by calling the St. Paul District Regulatory Branch at 651 290-5375., or via the Internet at <http://www.mvp.usace.army.mil/regulatory>.

On a case-by-case basis the Corps in consultation with the U.S. Fish and Wildlife Service may determine that some or all of these special conditions do not apply for Federal actions where the Federal agency or its designated non-Federal representative has successfully concluded consultation with the USFWS under the authority of section 7(a)(2) of the Endangered Species Act; or for Non-Federal actions, if the USFWS has granted the applicant an incidental take permit under the authority of section 10(a)(1)(B) of the Endangered Species Act. Otherwise, all of the following conditions apply:

- a. No activity that involves stream dewatering or stream diversion is authorized under the non-reporting GP at any time. Regulated activities that involve stream dewatering or stream diversion require case-by-case review and authorization in writing by the St. Paul District of the Corps of Engineers.
- b. No in-stream work in streams within Minnesota's Big Sioux and Rock River Watersheds or work in connected waters (side channels, cut-off channels, oxbows or wetlands) may be conducted between ice-out and August 15.
- c. No in-stream work may prevent Topeka shiners from moving up or downstream of the affected area, or moving between streams and side channels, oxbows, cut-off channels or wetlands.
- d. Motorized vehicles may not be operated in the stream. Conduct excavation, culvert placement, etc. from above stream banks.
- e. Any backfill placed in the stream must consist of rock or granular material free of fines, silts, and mud. Machinery parts (i.e., backhoe buckets, etc.) must be cleaned of all such material and free of grease, oil, etc. before in-stream use.
- f. Removal of vegetation and exposure of bare soil below the ordinary high water level and in riparian (i.e., stream side) or wetland areas adjacent to waters inhabited by Topeka shiner must be avoided or minimized and may only occur sequentially as needed over the length of the project.
- g. Disturbed soils must be mulched and reseeded promptly, preferably with native grasses and forbs (flowering herbaceous plants). The work site must be inspected after spring green up to ensure that vegetation is recovering as expected. Replanting must be done as necessary to prevent bank erosion.
- h. Erosion and sediment prevention measures must be implemented to the maximum extent practicable. Install silt fences adjacent to the stream. Install additional devices, such as silt fences or check bales, further upslope. Inspect devices frequently to ensure that they are effective and in good repair, especially after precipitation. Keep erosion control measures in place until the vegetation begins to recover.
- i. Existing features such as bridge abutments, retaining walls and riprap must be left in place to the maximum extent practical.
- j. The site should not be exposed to potential erosion for more than one day; avoid beginning work late in the week or just before a holiday if work would be left unfinished for more than one day.

- k. Construction may not begin until the entire project can be completed without delay. Do not begin work if rain is likely (e.g., greater than 50% chance of rain) before project will be completed. If work is already begun, cease work and ensure that erosion prevention measures are in place before rain begins.
- l. Construction, demolition and/or removal operations conducted over, or in the vicinity of, the stream, must be controlled to prevent materials from falling into the water. Any materials that do fall into the water or into areas below the ordinary high-water line must be retrieved promptly, by hand or by equipment working from the banks and disposed of in a manner consistent with state, local and Federal laws and ordinances.
- m. If any of the work authorized or required by this permit is performed by contract, the contract shall contain a provision requiring the contractor (and any subcontractors) to comply with all of the terms and conditions of this permit.
- n. If the project is modified, or if field conditions change, the permittee must contact the Corps of Engineers before proceeding.
- o. For ditch clean-outs, only accumulated sediment may be removed from the channel. No changes in stream geometry, width, or depth may occur. The streambed should be dry before sediment removal begins. The local SWCD and/or NRCS office should be consulted regarding implementation of Best Management Practices to minimize soil erosion.

GP/LOP-2003-MN, OTHER INFORMATION

1. PUBLIC/INTERAGENCY COORDINATION PROCESS. For GP/LOP-2003-MN applications that are subject to the public/interagency review

process, the District will, for the time periods noted under the LOPs above, publish notice of the application on an Internet World Wide Web page that is available to the coordinating agencies and the general public. This notice will also be emailed to coordinating agencies that request to receive such notice. At a minimum, the notice will identify the applicant, project location and nature, approximate impacts, and any proposed/required compensatory mitigation. The notice will include a brief project description and describe how to respond to the appropriate District regulatory project manager for the activity. Coordinating agencies in Minnesota are Indian Tribes that may be affected by the proposal, the Department of Natural Resources, the Pollution Control Agency, the Minnesota Coastal Zone Program, the State/Tribal Historical Preservation Officer, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service. The District will consider all comments and information received during the public/interagency review in completing its evaluation of the proposed activity.

2. COMPENSATORY MITIGATION REQUIREMENTS. Under GP/LOP-2003-MN, appropriate compensatory mitigation is required, in accordance with applicable Federal regulation and policy, generally on a minimum 1:1, acre-for-acre basis for wetland impacts of LOP projects that impact more wetland than shown for the following areas, as designated pursuant to the Minnesota Wetlands Conservation Act, generally:

- 400 square feet in a shoreland wetland protection zone,
- 2,000 square feet in a "less-than-50 percent" county,
- 5,000 square feet in a "50%-to-80%" county, and
- 10,000 square feet in a "greater than 80%" county.

When the thresholds are exceeded, the compensatory mitigation requirement applies to the project's total wetland

impacts, including the threshold amounts specified above. Use of Corps-approved mitigation banks and in-lieu fee procedures may generally be acceptable methods of providing compensatory mitigation for small projects having compensatory mitigation requirements of 1/4 acre or less. However, the District will determine appropriate compensatory mitigation requirements on a case-by-case basis in accordance with Federal guidelines and established District policy. Compensatory mitigation required by other Federal or state programs may, but will not necessarily, satisfy this Clean Water Act requirement. Acreage data concerning project impacts and compensatory mitigation will be recorded in the District database for monitoring, impact analysis, and program evaluation purposes.

3. FEDERAL TRUST RESPONSIBILITY TO INDIAN TRIBES.

Projects the District finds to have potential to affect tribal interests will be coordinated with the appropriate Indian Tribal governments. The Tribe's views and the Federal trust responsibility will be considered in the District's evaluation. Throughout the state, including the treaty-ceded territories, the District review of all provisional LOP and programmatic GP projects which impact more than 10,000 square feet of wetland/water area will include coordination with any potentially affected tribe(s). The District will provide, by facsimile transmission, project notifications to the concerned tribe(s) for a 30-day review period. The views of the tribe(s) will be considered in the District's evaluation of the activity and in the District's determination of whether the activity is in compliance with GP/LOP-2003-MN Standard Condition 18. that prohibits activities, or their operation, that may impinge or abrogate treaty rights, including, but not limited to, reserved treaty fishing and hunting rights.

4. PROJECT-SPECIFIC GP/LOP-2003-MN CONDITIONS.

The District evaluation will identify any need for special conditions to minimize adverse project impacts and/or protect the public interest.

5. FORM AND CONFIRMATION OF AUTHORIZATION. LOP authorizations will be confirmed by the St. Paul District sending the project proponent a letter of permission. The letter will identify any required special conditions.

6. ENDANGERED SPECIES AND CULTURAL RESOURCES. GP/LOP-2003-MN does not affect the Corps responsibility to insure that all Section 404 authorizations comply with Section 7 of the Federal Endangered Species Act and Section 106 of the National Historic Preservation Act. No Corps GP or letter of permission will be granted for projects found not to comply with these Acts.

7. PERIODIC INTERAGENCY REVIEW. The St. Paul District may periodically conduct a public/ interagency review of GP/LOP-2003-MN. The District may use its authority to modify, revoke, suspend or propose any Section 404 authorization after the annual review or at any other time it determines that circumstances concerning the public interest warrant such action.

8. DISCRETIONARY AUTHORITY. The Corps retains discretionary authority to require an individual permit review of any activity eligible for authorization under GP/LOP-2003-MN based on concern for the aquatic environment or for any other factor of the public interest.

9. DEFINITION OF SINGLE AND COMPLETE PROJECT. For purposes of GP/LOP-2003-MN, the term, "single and complete project" means the total project proposed by the project proponent. For example, if construction of a residential development or linear project such as a road or utility line affects several different areas of waters/wetlands, the cumulative total of all filled areas is the basis for deciding the project's total wetland/water impact. For "phased" developments, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed.

--CONTINUED ON NEXT PAGE--

General Conditions:

1. The time limit for completing work authorized by the non-reporting GP provisions of GP/LOP-2003-MN ends upon the expiration date of GP/LOP-2003-MN. The time limit for completing work authorized by the LOP provisions herein ends upon the expiration date of GP/LOP-2003-MN or two years after the date of the Corps authorization of the work under GP/LOP-2003-MN, whichever occurs later. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least three months before the expiration date is reached.
2. You must maintain the authorized activity in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the authorized activity you must immediately stop work and notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of GP/LOP-2003-MN.
5. Refer to the GP/LOP-2003-MN Standard Conditions above in this document.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. Limits of this authorization.
 - a. GP/LOP-2003-MN does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. GP/LOP-2003-MN does not grant any property rights or exclusive privileges.
 - c. GP/LOP-2003-MN does not authorize any injury to the property or

GP/LOP-2003-MN (2003 Revision)
rights of others.

d. GP/LOP-2003-MN does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In authorizing work, the Federal Government does not assume any liability, including but not limited to the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or

otherwise and bill you for the cost.

6. Extensions. General condition 1., above, establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

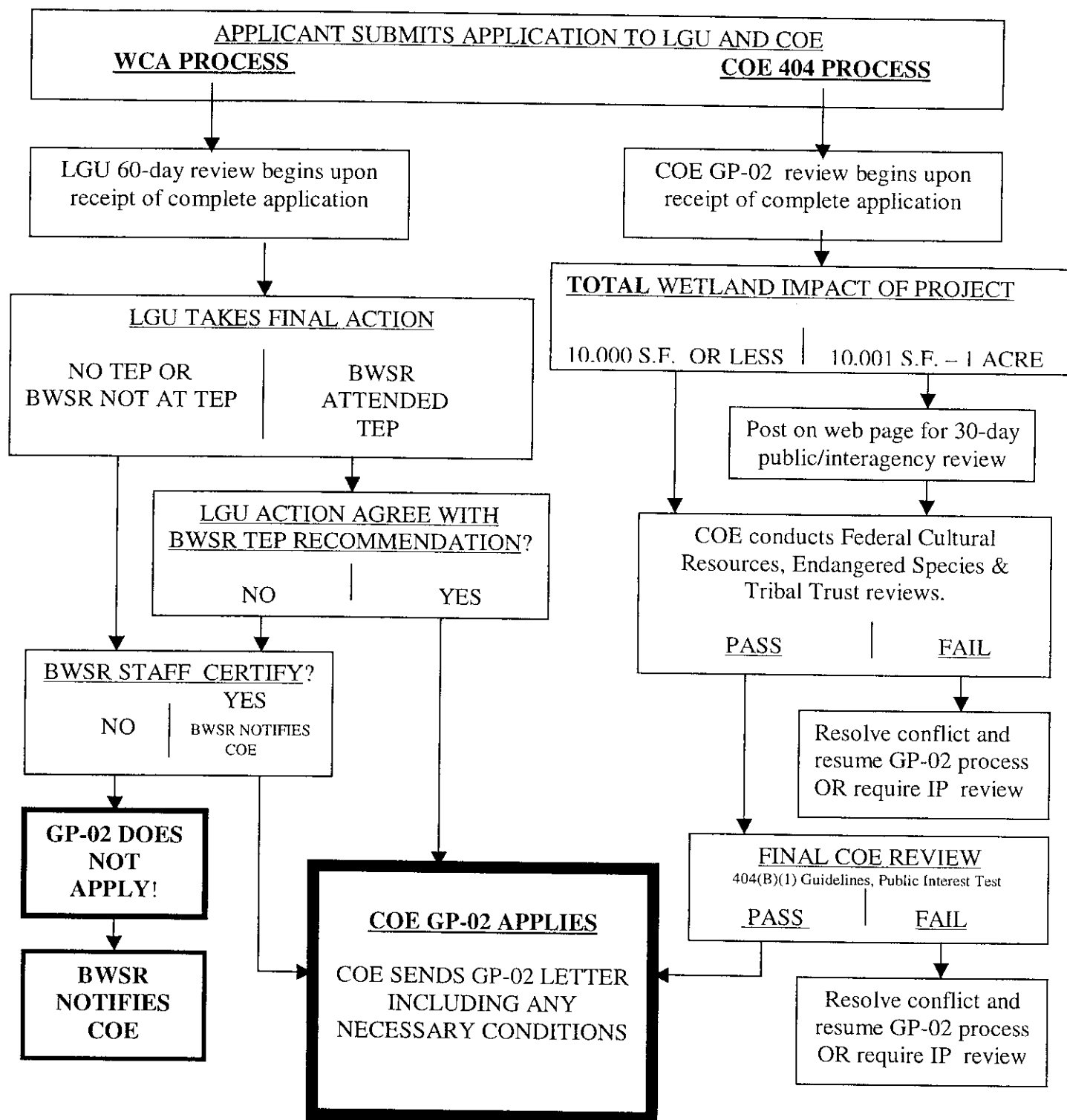
This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

*** DRAFT ***

(DATE)

Robert L. Ball
Colonel, Corps of Engineers
District Engineer

GP-02-MN



PROJECTS ELIGIBLE FOR COE EVALUATION UNDER GP-02-MN ARE: projects that require and receive an approved WCA Replacement Plan AND impact a total of 1 acre or less of wetland/water area AND are either consistent with a BWSR representative's recommendations on a WCA Technical Evaluation Panel OR that have been reviewed and certified by BWSR technical staff. Projects granted WCA Replacement Plan approval under local WCA plans not certified by COE as consistent with the Federal its Section 404 regulatory program are NOT ELIGIBLE for GP-02-MN. Refer to the GP-02-MN permit for certain other exclusions and conditions.

DRAFT 13 JAN 2003

GP-02-MN

DEPARTMENT OF THE ARMY PERMIT

Permittee The General Public in Minnesota

Permit No. GP-02-MN [DRAFT 11 JUN 2003]

Issuing Office St. Paul District
U.S. Army Corps of Engineers

Issuance Date: XXXXXXDRAFTXXXXXX

Expiration Date: XXXXXXDRAFTXXXXXX

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

After receipt of a written authorization letter from the St. Paul District and upon compliance with all terms and conditions of this general permit, the general public in the State of Minnesota will be authorized to perform work as described below.

WHAT THIS PERMIT COVERS: This general permit (GP-02-MN) may be used to authorize, under Section 404 of the Clean Water Act (33 USC 1344), the public in the State of Minnesota to conduct certain activities or projects that are granted an approved replacement plan pursuant to the Minnesota Wetlands Conservation Act (WCA). This GP is limited to activities that are part of a single and complete project that would result in filling, draining, excavating or inundating a total of less than 1.0 (one) acre of wetland/water area. THIS GP IS FURTHER LIMITED to activities that are in accordance with all Minnesota Board of Water and Soil Resources (BWSR) recommendations made through participation on a WCA Technical Evaluation Panel (TEP), or that have been reviewed and determined to satisfy all WCA requirements and conditions by a BWSR technical professional representative.

AREA COVERED BY THIS PERMIT: Waters of the U.S. in the State of Minnesota that are regulated under the WCA, except within Indian Reservations or as otherwise excluded below.

NOTE SPECIAL CONDITIONS FOR THE BIG SIOUX AND ROCK RIVER WATERSHEDS IN LINCOLN, PIPESTONE, MURRAY, ROCK AND NOBLES COUNTIES)

DETERMINATION OF WETLAND IMPACTS FOR PURPOSES OF GP-02-MN.

All of the wetland impacts (filling, draining, excavating or inundating) of a single and complete project are included in determining the project's total wetland impact, whether or not the activity that would cause the impact or the wetland area that would be impacted is subject to the Corps' Section 404 jurisdiction. Projects that involve no discharges of dredged or fill material that are subject to the Corps' Section 404 jurisdiction do not require a Section 404 permit.

EXCLUDED ACTIVITIES: The following activities are NOT eligible for authorization under GP-02-MN.

1. Projects that would impact a total of more than one acre of wetland, including any wetlands that are not waters of the U.S., by filling, drainage, excavation, or inundation.
2. Activities not regulated by WCA. However, such activities are not excluded if they are part of a single-and-complete project having other activities that are regulated by the WCA and the St. Paul District determines they are in compliance with all other GP-02-MN conditions, including the one-acre water/wetland impact limit for the entire project.
3. Activities regulated under a WCA "local plan" that has not been determined by the St. Paul District to be at least as environmentally protective as the St. Paul District's Section 404 program.
4. Activities in Navigable Waters of the U.S. (the Federal "Section 10" waters).
5. Activities in a calcareous fen or wetlands adjacent to and within 300 feet of a calcareous fen as officially designated by the state.
6. Activities that the St. Paul District of the Corps of Engineers determines warrant additional Federal evaluation to address the government's trust responsibility to American Indian Tribes.
7. Activities that the St. Paul District determines have potential to cause unacceptable adverse impacts on aquatic resources of national importance.
8. Activities that would have an adverse effect on a known archaeological site, or on Federally-listed endangered or threatened wildlife or plants or their critical habitat. This exclusion shall not apply if the effect has been resolved so

that the proposal is in conformance with the appropriate provisions of the Federal cultural resources and endangered species regulations.

9. Activities on any area, regardless of land ownership, that is within the exterior boundaries of Indian Reservations.
10. Activities, if any, for which state water quality certification under Section 401 of the Clean Water Act has not been granted or waived or that fail to comply with a conditional Section 401 certification of GP-02-MN. These activities will be considered by the Corps of Engineers to be denied without prejudice. Such activities may be authorized by GP-02-MN after the applicant obtains a project-specific Section 401 certification or waiver from the state certifying agency.
11. Any activity that the St. Paul District determines does not comply with one or more of the conditions described in this permit.
12. Activities in waters/wetlands in Minnesota's Big Sioux and Rock River Watersheds in **Murray, Nobles, Rock, Pipestone and Lincoln County** where the Federally-endangered minnow, the **TOPEKA SHINER** is found and that do not meet all of the Topeka Shiner special conditions (see permit condition number 22. beginning on page 8). On a case-by-case basis the Corps, in consultation with the U.S. Fish and Wildlife Service, may determine that some or all of these conditions do not apply to a specific project. Further information about the location of the Topeka Shiner may be obtained by contacting the St. Paul District as noted in condition 22. and via the Internet at: <http://www.mvp.usace.army.mil/regulatory/topekashiner> .

HOW TO APPLY FOR AUTHORIZATION UNDER THIS GENERAL PERMIT:

To receive authorization under this general permit, the applicant must submit an application for a WCA replacement plan to the appropriate local government unit official (LGU) that administers the WCA for the project area. The applicant must also provide a copy of the application and any supporting materials to the St. Paul District. The applicant, BWSR or the LGU administering the WCA for the project area must provide notice of the WCA approval for the project to the District before the District will complete its GP-02 review.

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ST. PAUL DISTRICT GP-02-MN PROCEDURES: Upon receipt of an application the Corps will send the applicant written notification that the application has been received and is being evaluated. This letter will advise that the proposed work is not and will not be authorized by GP-02-MN unless and until the applicant receives BOTH the WCA authorization AND a subsequent written letter of authorization from the Corps for the project.

The Corps' initial acknowledgement letter will generally request any additional information that the Corps finds necessary to properly evaluate the application.

The Corps' review and coordination of GP-2 activities that impact more than 10,000 square feet of water/wetland area, including any such areas that are not waters of the U.S., will include posting a project notification on the District's web page for a 30-day public/interagency review and comment period.

The Corps will not conclude its review until notified by BWSR that the LGU's WCA approval is consistent with the recommendations of a BWSR representative on the project TEP or that the LGU's WCA approval has been reviewed by BWSR technical professional staff and determined to be consistent with all WCA requirements.

The Corps' authorization letters will contain any special conditions that the Corps finds necessary to protect the aquatic environment, or to ensure that only minimal environmental impacts are authorized or that compensatory mitigation for project impacts satisfies Federal requirements.

PERMIT CONDITIONS:

1. The time limit for completing work authorized under GP-02-MN ends upon expiration of the WCA authorization (replacement plan) for the work. This general permit expires on XXXXXXDRAFTXXXXXX unless sooner revoked, reissued, or modified.
2. Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable.
3. In addition to the conditions contained in this permit, some GP-02-MN authorizations may be subject to project-specific special conditions that will be specified in the District's authorization letter for the project.

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4. All fill (including riprap) must consist of suitable material free from toxic pollutants in other than trace quantities. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.,) and material discharged must be free from toxic pollutants in toxic amounts (reference Section 307 of the Clean Water Act).

5. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and remain until all exposed soil and other fills, as well as any work below the ordinary high water mark must be permanently stabilized at the earliest practicable date. Upon completion of earthwork operations all exposed slopes, fills, and disturbed areas must be given sufficient protection by appropriate means such as landscaping, or planting and maintaining vegetative cover to prevent subsequent erosion. Work should be done in accordance with state approved, published practices, such as defined in Minnesota Pollution Control Agency Document, PROTECTING WATER QUALITY IN URBAN AREAS - BEST MANAGEMENT PRACTICES FOR MINNESOTA. This document is available via the Internet at:
<http://www.pca.state.mn.us/water/pubs/sw-bmpmanual.html>

6. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

7. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.

8. No activity or its operation may impinge or abrogate reserved treaty rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must include notification to the District in the permit application if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic

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resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places. In addition, rock or fill material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened to obtain material, the State Historic Preservation Officer (SHPO) must be notified prior to disturbing the earth at the new site. Evidence of this consultation with the SHPO must be forwarded to the St. Paul district Office by the permittee.

If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately stop work and notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

10. No activity is authorized which is likely to adversely affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Authorization of an activity under GP-02-MN does not authorize the take of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., a Biological Opinion with incidental take provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal takes of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their World Wide Web pages on the Internet. Note permit condition 22. concerning the Federally endangered Topeka Shiner in southwest Minnesota.

If it becomes apparent that a Federally listed endangered plant or animal species will be affected by work authorized by this permit, work must be stopped immediately and the St. Paul District of the Corps of Engineers must be contacted for further instruction.

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11. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

12. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

13. No activity may cause more than a minimal adverse effect on navigation.

14. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit and Minnesota Wetland Conservation Act requirements for the activity. You are not relieved of this requirement if you abandon the permitted activity.

15. Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter the watercourse as a result of spillage, natural runoff, flooding, or any other means.

16. If dredged or excavated material is placed on an upland disposal site (above the ordinary high-water mark) the site must be securely diked or contained by some other acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal site, must be fully completed prior to placement of any fill material.

17. All work or discharges to a watercourse, particularly from hydraulic dredging, must meet applicable Federal, State, and local water quality and effluent standards on a continuing basis.

18. An investigation must be made to identify water intakes or other activities that may be affected by suspended solids and turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.

19. A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a

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spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the State Duty Officer at 1-800-422-0798 and the U.S. Coast Guard at telephone number 1-800 424-8802.

20. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

21. If a conditioned state water quality certification or WCA replacement plan has been granted for your project, you must comply with the conditions specified in the certification or replacement plan as special conditions to this permit.

22. The following special conditions to protect a Federally endangered fish, the Topeka Shiner (*Notropis topeka*), apply in Minnesota's Big Sioux and Rock River Watersheds in LINCOLN, PIPESTONE, MURRAY, ROCK AND NOBLES COUNTIES. These conditions apply to all regulated activities that are conducted in streams and in side channels, cut-off channels, oxbows, and wetlands that are at least periodically connected to streams in Minnesota's Big Sioux and Rock River Watersheds. On a case-by-case basis the Corps and/or U.S. Fish and Wildlife Service (USFWS) may determine that these conditions do not apply to certain areas within these watersheds where Topeka shiners may not occur; however, the Topeka Shiner occurs throughout most of these two watersheds. Therefore, persons proposing work in water or wetland areas in these watersheds should contact the Corps' Regulatory Project Manager for the project area to determine if these conditions apply to their project. Corps' contact information is available by calling the St. Paul District Regulatory Branch at 651 290-5375, or via the Internet at <http://www.mvp.usace.army.mil/regulatory>.

On a case-by-case basis the Corps in consultation with the U.S. Fish and Wildlife Service may determine that some or all of these special conditions do not apply for Federal actions where the Federal agency or its designated non-federal representative has successfully concluded consultation with the USFWS under the authority of section 7(a)(2) of the Endangered Species Act; or for Non-Federal actions, if the USFWS has granted the applicant an incidental take permit under the authority of section 10(a)(1)(B) of the Endangered Species Act. Otherwise, all of the following conditions apply:

a. No activity that involves stream dewatering or stream diversion is

authorized under the non-reporting GP at any time. Regulated activities that involve stream dewatering or stream diversion require case-by-case review and authorization in writing by the St. Paul District of the Corps of Engineers.

- b. No in-stream work in streams within Minnesota's Big Sioux and Rock River Watersheds or work in connected waters (side channels, cut-off channels, oxbows or wetlands) may be conducted between ice-out and August 15.
- c. No in-stream work may prevent Topeka shiners from moving up or downstream of the affected area, or moving between streams and side channels, oxbows, cut-off channels or wetlands.
- d. Motorized vehicles may not be operated in the stream. Conduct excavation, culvert placement, etc. from above streambanks.
- e. Any backfill placed in the stream must consist of rock or granular material free of fines, silts, and mud. Machinery parts (i.e., backhoe buckets, etc.) must be cleaned of all such material and free of grease, oil, etc. before in-stream use.
- f. Removal of vegetation and exposure of bare soil below the ordinary high water level and in riparian (i.e., stream side) or wetland areas adjacent to waters inhabited by Topeka shiner must be avoided or minimized and may only occur sequentially as needed over the length of the project.
- g. Disturbed soils must be mulched and reseeded promptly, preferably with native grasses and forbs (flowering herbaceous plants). The work site must be inspected after spring green up to ensure that vegetation is recovering as expected. Replanting must be done as necessary to prevent bank erosion.
- h. Erosion and sediment prevention measures must be implemented to the maximum extent practicable. Install silt fences adjacent to the stream. Install additional devices, such as silt fences or check bales, further upslope. Inspect devices frequently to ensure that they are effective and in good repair, especially after precipitation. Keep erosion control measures in place until the vegetation begins to recover.
- i. Existing features such as bridge abutments, retaining walls and riprap must be left in place to the maximum extent practical.

- j. The site should not be exposed to potential erosion for more than one day; avoid beginning work late in the week or just before a holiday if work would be left unfinished for more than one day.
- k. Construction may not begin until the entire project can be completed without delay. Do not begin work if rain is likely (e.g., greater than 50% chance of rain) before project will be completed. If work is already begun, cease work and ensure that erosion prevention measures are in place before rain begins.
- l. Construction, demolition and/or removal operations conducted over, or in the vicinity of, the stream, must be controlled to prevent materials from falling into the water. Any materials that do fall into the water or into areas below the ordinary high-water line must be retrieved promptly, by hand or by equipment working from the banks and disposed of in a manner consistent with state, local and Federal laws and ordinances.
- m. If any of the work authorized or required by this permit is performed by contract, the contract shall contain a provision requiring the contractor (and any subcontractors) to comply with all of the terms and conditions of this permit.
- n. If the project is modified, or if field conditions change, the permittee must contact the Corps of Engineers before proceeding.
- o. For ditch clean-outs, only accumulated sediment may be removed from the channel. No changes in stream geometry, width, or depth may occur. The streambed should be dry before sediment removal begins. The local SWCD and/or NRCS office should be consulted regarding implementation of Best Management Practices to minimize soil erosion.

ADDITIONAL INFORMATION:

The Corps' review for all projects will include a determination concerning compliance of the project with Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act and Federal Tribal Trust responsibilities. Projects found not to comply with any of the above will not be authorized under the GP or any other Corps' permit authorization unless and until actions are taken so that compliance is attained.

This GP does not apply to any project that is wholly exempt from WCA regulation.

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The District evaluation will identify any need for special conditions to minimize adverse project impacts and/or protect the public interest. Such conditions will be specified in the GP confirmation letter for the project.

The Corps retains discretionary authority to require an individual permit review of any activity eligible for authorization under GP-02-MN based on concern for the aquatic environment or any other factor of the public interest.

For purposes of GP-02-MN, the term, "single and complete project" means the total project proposed or accomplished by one project proponent, owner/developer, partnership or other association of owners/developers (see definition of independent utility below). For "phased" developments, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended primary purpose whether or not other phases were constructed.

Independent Utility: This is a test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project to have functionality do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Congressional Authorities: When issued for your project, GP-02-MN provides authorization to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification suspension, or revocation of this permit.

Reliance on Applicant's Data: The determination that authorization under this permit is not contrary to the public interest is made in reliance on information provided by applicants.

Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and

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conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

DRAFT - PROPOSED

(DISTRICT ENGINEER SIGNATURE)

Colonel, Corps of Engineers
District Engineer

(DATE)